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No. 97-1923

In The

Supreme Court of the United States

October Term, 1997

VICKI MEISNER, Individually and as personal representative of the Estate of Howard Gene Weatherly,

Petitioner,

vs.

POTLATCH CORPORATION, A Delaware Corporation, and ROBERT HOUSE,

Respondents.

On Petition for Writ of Certiorari to the Idaho Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner's father died in a work-related accident near Pierce, Idaho while working for Potlatch Corporation. Petitioner, the decedent's adult daughter, received no worker's compensation death benefits because she was not economically dependent on her father. No benefits were payable from Potlatch's Retirement Plan because Petitioner's father died before he retired and did not leave a surviving spouse.

Petitioner contends that Idaho's Worker's Compensation Act violates the Equal Protection Clause by discriminating based on dependency and that the Retirement Plan violates the Equal Protection Clause by discriminating based on marital status.

1.

Does Idaho's Worker's Compensation Act violate the Equal Protection Clause by discriminating on the basis of dependency?

2.

Does the Retirement Plan violate the Equal Protection Clause by discriminating on the basis of marital status?

STATEMENT PURSUANT TO RULE 29.6

Potlatch Corporation has no parent companies and no nonwholly owned subsidiaries.

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STATEMENT OF THE CASE

Howard Weatherly and Robert House were employees of Potlatch Corporation ("Potlatch"). On July 29, 1994, Mr. Weatherly and Mr. House were working for Potlatch at a plywood mill near Pierce, Idaho when a load of plywood fell from Mr. House's forklift onto Mr. Weatherly. Mr. Weatherly was killed.

Idaho's Worker's Compensation Act requires employers to pay the medical and funeral expenses of workers who die in work-related accidents. Idaho Code §§ 72-432(1) and 72-436. The Act also requires employers to make payments — known as "death benefits" — to the worker's spouse and dependents. Idaho Code § 72-413. If a worker dies without a spouse or dependents, the employer must pay $10,000 to the State's Industrial Special Indemnity Account. Idaho Code § 72-420.

Potlatch's worker's compensation surety paid Mr. Weatherly's medical and funeral expenses. However, no death benefits were payable because Mr. Weatherly died unmarried and without dependents. Potlatch's surety did make the required $10,000 payment to the Industrial Special Indemnity Account.

Mr. Weatherly was a participant in a 401(k) Plan and in a Retirement Plan maintained pursuant to a collective bargaining agreement between Potlatch and Mr. Weatherly's union, the International Woodworkers of America. Both Mr. Weatherly and Potlatch contributed to the 401(k) plan, but only Potlatch contributed to the Retirement Plan. After Mr. Weatherly died, the full value of the 401(k) plan was paid to Mr. Weatherly's heirs. No benefits were payable from the Retirement Plan because Mr. Weatherly died before he retired and did not leave a surviving spouse.

Petitioner, one of Mr. Weatherly's three adult children, filed a wrongful death action against Potlatch and Mr. House. Petitioner's Complaint also included a claim for Retirement Plan benefits.

In Idaho, as in most states, civil lawsuits against a worker's employer and co-employees for work-related injuries and deaths are barred. Idaho Code § 72-211. Consequently, Potlatch and Mr. House moved for summary judgment on Petitioner's wrongful death claim.

As mentioned, no benefits are payable from the Retirement Plan when a participant dies before he retires and does not leave a surviving spouse. Additionally, Petitioner is precluded by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, from pursuing benefits from the Plan because she is neither a "participant" nor a "beneficiary" of the Plan. For those reasons, Potlatch also moved for summary judgment on the Retirement Plan claim.

In response, Petitioner contended that the Worker's Compensation Act's bar to her civil action is unenforceable because the death benefits statute — Idaho Code § 72-413 — violates the Equal Protection Clause by discriminating on the basis of dependency. Petitioner also contended that the Retirement Plan violates the Equal Protection Clause by discriminating on the basis of marital status. The trial court rejected Petitioner's contentions and granted the motion for summary judgment.

Petitioner appealed to the Idaho Supreme Court, where she once again raised her equal protection claims. The Idaho Supreme Court concluded that Idaho Code § 72-413 does not violate the Equal Protection Clause because the dependency-based distinction it draws is rationally related to a legitimate

governmental purpose. *Meisner v. Potlatch Corp.*, __ Idaho __, 954 P.2d 676, 680 (1998). The Court concluded that the Equal Protection Clause does not apply to the Retirement Plan because the Plan does not involve "state action." 954 P.2d at 681.

Petitioner filed a timely Petition for a Writ of Certiorari with this Court. Petitioner asks this Court to consider her Equal Protection Clause challenges to Idaho Code § 72-413 and to the Retirement Plan. Petitioner also claims — for the first time — that Idaho's Worker's Compensation Act violates her Seventh Amendment right to a trial by jury.

REASONS FOR DENYING THE WRIT

I.

IDAHO CODE SECTION 72-413 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

Idaho Code § 72-413 provides that weekly income benefits in specified amounts are to be paid to the spouse and dependents of workers who die as a consequence of work-related accidents or diseases. Dependent children (as well as dependent brothers, sisters, grandparents and grandchildren) are entitled to benefits. Independent children, however, are not entitled to benefits. Petitioner contends that Idaho Code § 72-413's distinction between dependent and independent children violates the Equal Protection Clause of the Fourteenth Amendment.

Equal Protection Clause challenges to statutes are subject to one of three levels of scrutiny: (1) strict scrutiny; (2) intermediate scrutiny; or (3) rational basis scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439-442 (1985). Strict scrutiny applies to classifications based on race or national origin and to classifications affecting fundamental

rights. *Clark v. Jeter*, 486 U.S. 456, 461 (1988). Intermediate scrutiny applies to classifications based on gender and illegitimacy. *Craig v. Boren*, 429 U.S. 190, 197 (1976); and *Mills v. Habulutzel*, 456 U.S. 91, 98 (1982). Rational basis scrutiny applies to classifications which neither burden a fundamental right nor target a suspect class. *Romer v. Evans*, 517 U.S. 620, 631 (1996).

Idaho Code § 72-413's dependency-based classification is not based on race, national origin, legitimacy or gender. Furthermore, there is no "fundamental right" to receive monetary payments following the death of a parent. Idaho Code § 72-413 is, therefore, subject to rational basis scrutiny.

A classification will withstand rational basis scrutiny "so long as it bears a rational relation to some legitimate end." *Romer*, 517 U.S. at 631; and *Lyng v. International Union, UAW*, 485 U.S. 360, 370 (1988). Idaho Code § 72-413 is a part of Idaho's Worker's Compensation Act. The goal of the Act is to provide sure and certain benefits to workers and their families regardless of fault while at the same time protecting Idaho's industry by creating limited liability. Idaho Code § 72-201 and *Stample v. Idaho Power Company*, 92 Idaho 763, 450 P.2d 610 (1969). Those goals are clearly legitimate.

The classification created by Idaho Code § 72-413 is rationally related to those legitimate goals: dependent children receive benefits regardless of fault, but in order to keep liability limited, independent children are not entitled to benefits.

Furthermore, as pointed out by the Idaho Supreme Court, the purpose of the Worker's Compensation Act is to provide for loss of monetary support. *Meisner*, 954 P.2d at 680. It was therefore both rational and reasonable for the Idaho legislature to limit death benefits to those individuals who were dependent

on the deceased worker. It is rational and reasonable to discriminate based on need.

This Court has not addressed the specific issue presented by this case. Many state courts, however, have held that statutes which limit the payment of death benefits in a manner similar to Idaho Code § 72-413 do not violate the Equal Protection Clause. *Riley v. National Mills, Inc.*, 19 Kan. App. 2d 541, 873 P.2d 214 (1994); *Smith v. Gortman*, 261 Ga. 206, 403 S.E. 2d 41 (1991); *Yarchak v. Munford, Inc.*, 570 So. 2d 648 (Ala. 1990), *cert. denied*, 500 U.S. 942; *Maderazo v. Archem Co.*, 788 S.W. 2d 395 (Tex. App. 1990); *Estate of Coates v. Pacific Engineering*, 71 Haw. 358, 791 P.2d 1257 (1990); *Hughes v. Decator General Hospital*, 514 So. 2d 935 (Ala. 1987); *Nosser v. Natchez Gitney Jungle, Inc.*, 511 So. 2d 141 (Miss. 1987); *Taylor v. Southeast-Harrison Western Corporation*, 694 P.2d 1160 (Ak. 1985); *Sanchez v. M.M. Sundt Construction Co.*, 103 N.M. 294, 706 P.2d 158 (Ct. App. 1985); *Barnes v. Double Seal Glass Company, Inc.*, 129 Mich. App. 66, 341 N.W. 2d 812 (1983); *Flynn v. Devore*, 373 So. 2d 580 (La. App. 1979); *Branch v. Aetna Casualty and Surety Co.*, 370 So. 2d 1270 (La. App. 1979); *Slagle v. Reynolds Metal Co.*, 344 So. 2d 1216 (Ala. 1977); *West v. Zeibell*, 87 Wash.2d 198, 550 P.2d 522 (1976); *Mullarkey v. Florida Feed Mills, Inc.*, 268 So. 2d 363 (1972); *Leech v. Georgia Pacific Corp.*, 259 Or. 161, 485 P.2d 1195 (1971).

Additionally, this Court held that it was not a violation of the Equal Protection Clause for the Social Security Act to authorize payment of survivor's benefits to a widowed spouse who remarried after age sixty, but not to a similarly situated divorced widowed spouse. *Bowen v. Owens*, 476 U.S. 340 (1986). This Court held that it was rational for Congress to treat the two groups differently based on the assumption that divorced widowed spouses are generally less dependent on the

resources of their former spouses than are widows and widowers. 476 U.S. at 349. This Court thus implicitly acknowledged the obvious — *i.e.*, that it is rational to discriminate based on dependency.

In short, Idaho Code § 72-413's dependency-based classification is rationally related to a legitimate end, and the statute therefore does not violate the Equal Protection Clause.

II.

PETITIONER'S WRONGFUL DEATH ACTION IS BARRED EVEN IF IDAHO CODE SECTION 72-413 VIOLATES THE EQUAL PROTECTION CLAUSE.

As mentioned, Idaho Code § 72-211 bars all civil lawsuits against a worker's employer and co-employees for work-related injuries or deaths. Petitioner, however, claims that the bar is unenforceable because Idaho Code § 72-413 violates the Equal Protection Clause.

The goal of the Equal Protection Clause is equality. Petitioner, however, does not seek equality; instead, she seeks preferential treatment. Petitioner is not asking that she be granted the same benefits as dependent children — i.e., worker's compensation death benefits. Rather, she is asking for something dependent children do not have: the right to pursue a civil lawsuit.

If Idaho Code § 72-413 unconstitutionally discriminates against independent children, the remedy should be worker's compensation death benefits rather than a nullification of Idaho Code Section 72-211's bar. The Equal Protection Clause should not be used as a lever for obtaining preferential treatment.

III.

THE SEVENTH AMENDMENT ISSUE SHOULD NOT BE CONSIDERED.

Petitioner's claim that Idaho's Worker's Compensation Act violates her Seventh Amendment right to a jury trial was not raised in the Idaho courts. The claim was raised for the first time in Petitioner's Petition for Writ of Certiorari. This Court does not decide federal constitutional issues raised for the first time on review of state court decisions. *Cardinal v. Louisiana*, 394 U.S. 437, 438 (1969).

IV.

THE SEVENTH AMENDMENT IS INAPPLICABLE.

Petitioner's Complaint was filed in state court, and Idaho's Worker's Compensation Act and Petitioner's wrongful death claim arise solely from the statutes and common law of Idaho. The Seventh Amendment does not apply to state law claims filed in state court. *Walker v. Sauvinet*, 92 U.S. 90, 92-93 (1875).

V.

PETITIONER LACKS STANDING TO PURSUE THE RETIREMENT PLAN CLAIM.

The Retirement Plan falls within the definition of an "employee benefit plan" and is therefore governed by the Employee Retirement Income Security Act ("ERISA"). 29 U.S.C. §§ 1002(2) and (3) and § 1003(1). ERISA authorizes benefit plan "participants" and "beneficiaries" to bring actions for plan benefits. 29 U.S.C. § 1132(a)(1). Petitioner does not

fall within the definition of either a "participant" or a "beneficiary" because she is neither an employee nor a designated beneficiary of an employee. 29 U.S.C. §§ 1002(7) and (8). Petitioner, therefore, does not have the right to bring an action for Plan benefits.

VI.

THE EQUAL PROTECTION CLAUSE DOES NOT APPLY TO THE RETIREMENT PLAN.

Petitioner argues that the Retirement Plan's distinction between married and unmarried workers violates the Equal Protection Clause of the Fourteenth Amendment. However, a violation of the Fourteenth Amendment requires state action. *The Civil Rights Cases*, 109 U.S. 3 (1883). Plainly, there is no state action involved in the Retirement Plan. It is simply a matter of private contract between Potlatch, the International Woodworkers of America and Mr. Weatherly.

Petitioner reliance on *Shelley v. Kraemer*, 334 U.S. 1 (1947), for the requisite link to state action is misplaced. In *Shelley*, this Court held that court enforcement of a private, racially restrictive covenant constituted state action. *Id.* at 20. This case is different. In *Shelley*, the property owners asked the court to order a seller to comply with a racially restrictive covenant. In this case, Potlatch has not asked the court to order anyone to do anything; instead, it is merely defending a lawsuit. In *Shelley*, the discrimination could not be enforced absent court assistance. Here, no court assistance is necessary for Potlatch to implement the terms of the Retirement Plan. If this case involves state action merely because Petitioner filed a lawsuit, then every contract upon which suit is filed involves state action and is subject to constitutional review.

VII.

THE DISTINCTION MADE BY THE RETIREMENT PLAN IS RATIONAL.

Even if the Equal Protection Clause does apply to the Retirement Plan, the Plan's distinction between married and unmarried workers is not unconstitutional.

The Retirement Plan's marriage-based classification is not based on race, national origin, legitimacy or gender. Furthermore, there is no "fundamental right" for one's estate to receive money from a retirement plan following death. The Retirement Plan therefore would be subject to rational basis scrutiny.

As mentioned, a classification will withstand rational basis scrutiny "so long as it bears a rational relation to some legitimate end." *Romer*, 517 U.S. at 631; and *Lyng*, 485 U.S. at 370 (1988). The purpose of the Retirement Plan is to pay retirement income to Plan participants and their qualified beneficiaries at an acceptable cost. The Retirement Plan advances that goal by limiting the circumstances under which benefits are payable under the Plan.

Potlatch and the International Woodworkers Union could have negotiated a Retirement Plan which provided for payments to employees' estates even when they die before retirement and without a spouse. However, such a Plan naturally would have been much more expensive, and the additional costs would have to have been recouped through reduced benefits in other areas or a reduced hourly wage. The employees and their union instead chose the Retirement Plan in question. Their choice is rational, and there is no reason to second guess their decision.

CONCLUSION

For the reasons given above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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